## REMARKS/ARGUMENTS

The non-final Office Action of February 27, 2006 has been carefully reviewed and these remarks are responsive thereto. By this amendment, claims 1-3, 15, 20, 24, 26, and 37 are amended. No new matter has been added. Reconsideration and allowance of the instant application are respectfully requested

***Rejections Under 35 U.S.C. § 112, second paragraph***

Claims 15 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Applicant has amended claim 15 to further clarify the subject matter of the invention. Accordingly, Applicant requests withdrawal of this rejection.

Claims 1, 20, 24, and 37 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to provide an antecedent basis for limitations in the claim. Applicant has amended claims 1, 2, 3, 20, 24, and 37 to provide a proper antecedent basis for all claim limitations. Accordingly, Applicant requests withdrawal of this rejection.

***Rejections Under 35 U.S.C. § 112, first paragraph***

Claims 21 and 22 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicant respectfully traverses. The subject matter of claim 21, specifically "identifying the sender includes means for obtaining at least one of a Domain Name Service verification and a peer IP address of the sender TCP connection," is supported by the Specification at page 4, lines 3-7. The subject matter of claim 22, specifically, "sending a large number of e-mails, sending e-mails of relatively large sizes, using a relatively large amount of TCP connection time, and causing a TCP timeout," is supported by the Specification at page 4, lines 9-11. Accordingly, Applicant respectfully requests withdrawal of these rejections, or alternatively that the Examiner meet "the initial burden of presenting by a preponderance of the evidence why a person skilled in the art would not recognize in [the Applicant's] disclosure a description of the invention defined by the claims." MPEP § 2163.04.

Independent claims 1, 20, 24, 26, and 37 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement with respect to the term "penalty count." Specifically, the Office Action alleges, "It has not been described what is a

penalty. Furtermore [sic] it is not clear in view of the independent claims how one determines a cumulative penalty count and how ... this concept is enabled in this invention." Office Action, page 3. Applicant respectfully traverses. The Applicant's disclosure repeatedly provides examples of penalties and describes in detail how one might determine a cumulative penalty count. For example, the Specification at page 6, line 18, through page 8, line 8 thoroughly describes an illustrative calculation of a cumulative penalty count. Equations 1-7 in this section provide support for understanding what a penalty is and determining a cumulative penalty count. Accordingly, Applicant respectfully requests withdrawal of these rejections, or alternatively that the Examiner meet "the initial burden to establish a reasonable basis to question the enablement provided for the claimed invention." MPEP § 2164.04.

***Allowable Claims***

Applicant notes with appreciation the indication of allowable subject matter in claims 14-16, 18-19, 31, 35-36, 45-47, and 49-50. Applicant has not rewritten these claims in independent form because Applicant maintains that all claims are presently allowable based on the arguments and remarks presented herein.

***Rejections Under 35 U.S.C. § 103***

Claims 1-3, 5-10, 20-30, 32-34, 37-38, and 40-41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,321,267 to Donaldson, *et al.* (*Donaldson*), in view of U.S. Patent No. 6,484,203 to Porras *et al.* (*Porras*). Applicant respectfully traverses this rejection for at least the following reasons.

Claim 1 recites, in part, "determining a cumulative penalty count value associated with said sender identifier, wherein determining said cumulative penalty count value comprises assessing a penalty count value to said sender identifier for an undesirable activity performed by the sender." The Office Action correctly states that *Donaldson*, "does not specifically teach the details of a method 'wherein determining said cumulative penalty count value comprises assessing a penalty count value to said sender identifier for an undesirable activity.'" Office Action, page 6. However, the Office Action then implies that *Porras* teaches this element at column 12, lines 27-40. Applicant disagrees with this characterization of the new *Porras* reference. *Porras* discloses certain techniques for identifying a data transfer as malicious, for example, by examining the size of the

data, source and destination directory of the data transfer, intensity of the transfer commands, and the time of day that the transfer was received. *Porras*, Col. 12, lines 24-40. However, *Porras* never teaches or suggests "assessing a penalty count value to said sender identifier for an undesirable activity," as recited in claim 1. In *Porras*, each data transfer, or message, is evaluated based on its individual characteristics, never based on any previous undesirable activities performed by the transferor, or message sender. According to *Porras*, a transferor attempting a server intrusion or a sender of a malicious email message is not penalized for this behavior, and thus can easily make another malicious attempt in the future, without the server responding any differently. Accordingly, neither *Donaldson*, nor *Porras*, nor their proposed combination teaches or suggests, "determining a cumulative penalty count value associated with said sender identifier, wherein determining said cumulative penalty count value comprises assessing a penalty count value to said sender identifier for an undesirable activity performed by the sender," as recited in claim 1. Dependent claims 2-3 and 5-19 are allowable over *Donaldson*, *Porras*, and their proposed combination for at least the same reasons as base claim 1, as well as based on the additional features recited therein.

Independent claim 20 recites, similarly to claim 1, "said penalty count being a function of previous undesirable activity associated with the sender." Independent claims 26, 37 and amended claim 24 similarly recite, the "penalty count value is based at least in part on previous undesirable activity performed by the sender." Thus, for at least the same reasons discussed above in relation to claim 1, independent claims 20, 24, 26, and 37 are not obvious over the cited references. Dependent claims 21-23, 25, 27-36, 38, and 40-50 are allowable over *Donaldson*, *Porras*, and their proposed combination for at least the same reasons as their respective base claims, as well as based on the additional features recited therein.

Claims 11-13, 17, 42-44, and 48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Donaldson* and *Porras*, in view of U.S. Patent No. 6, 502,135 to Munger *et al.* (*Munger*). However, since *Munger* does not teach or suggest a "penalty count value" in relation to or based on a "previous undesirable activity performed by the sender," as recited in the independent claims, *Munger* thus fails to overcome the above-discussed deficiencies of *Donaldson* and *Porras*. Therefore, claims 11-13, 17, 42-44, and 48, are allowable over *Donaldson*, *Porras*, *Munger*, and their proposed combination for at least the same reasons as their respective base claims, as well as based on the additional features recited therein.

## CONCLUSION

All rejections having been addressed, applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. However, if for any reason the Examiner believes the application is not in condition for allowance or there are any questions, the examiner is requested to contact the undersigned at (202) 824-3153.

Respectfully submitted,

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